



CAPACITY, CONSENT, LIBERTY & ADVOCACY

# The Mental Capacity Act 2005

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Understanding capacity, supported decision-making  
and the five statutory principles.

## The key idea

The Mental Capacity Act protects the right to make your own decisions wherever possible. Capacity is about a particular decision at a particular time - not a blanket judgement based on diagnosis, disability, age or an 'unwise' choice.

# What is the Mental Capacity Act?

The **Mental Capacity Act 2005 (MCA)** provides the legal framework in England and Wales for supporting people aged 16 and over who may be unable to make some decisions for themselves. Its starting point is not incapacity: it is the person's right to make their own decisions wherever possible.

## Capacity is decision-specific

A person may be able to make one decision but not another. Capacity must be considered in relation to the **particular decision** that needs to be made and at the **time** it needs to be made.

## Capacity can change

An impairment or disturbance affecting the mind or brain may be permanent or temporary. Capacity can therefore fluctuate or improve. If a decision can safely wait until the person is more able to make it themselves, that may be important.

## Diagnosis does not equal incapacity

Autism, ADHD, dementia, learning disability, brain injury, mental illness, stroke, communication differences or another diagnosis do **not** automatically mean that somebody lacks capacity.

## Who does the Act affect?

The MCA is relevant to everyday and significant decisions across healthcare, social care, welfare and finances. It applies to professionals and also affects family members, carers, attorneys, deputies and others who may act or make decisions for somebody who lacks capacity.

## England and Wales

This resource explains the Mental Capacity Act framework for **England and Wales**. Scotland and Northern Ireland have different legal frameworks.

# The five statutory principles

The five principles in section 1 of the Act underpin everything done under the MCA.

## 1. Presume capacity

A person must be assumed to have capacity unless it is established that they lack capacity. The burden is not on the person to prove that they can decide.

## 2. Support decision-making

A person must not be treated as unable to decide until all practicable steps to help them make the decision have been tried without success.

## 3. Unwise decisions

A person must not be treated as lacking capacity merely because they make a decision that other people consider unwise.

## 4. Best interests

Anything done or decided for a person who lacks capacity under the Act must be done or decided in their best interests.

## 5. Least restrictive option

Before acting, consider whether the purpose can be achieved just as effectively in a way that restricts the person's rights and freedom less.

## Why these principles matter

The Act is intended to enable and support people rather than unnecessarily control their lives. The first three principles protect the person's own decision-making; the final two govern actions and decisions when the person lacks capacity for the matter in question.

# Supporting someone to make their own decision

Before concluding that a person cannot make a decision, practical steps should be taken to make the decision as accessible as possible.

## Communication

Use the person's preferred communication method. This might include plain language, pictures, Easy Read, sign language, symbols, communication devices, writing, gestures or another reliable way of expressing a choice.

## Environment

Consider noise, lighting, sensory demands, privacy, unfamiliar people, pain, distress and whether the setting itself is making it harder to think or communicate.

## Timing

Some people think more clearly at particular times of day or when medication, fatigue, anxiety, delirium or other temporary factors are better managed.

## Information

Break information into manageable parts and explain the options and reasonably foreseeable consequences in a way the person can understand.

## Support should be individual

The question is not simply whether somebody can understand information presented in the usual way. The MCA requires practicable support to be considered first. A person who cannot use speech may still communicate a clear decision through signs, eye movements, technology or other means.

## Processing time matters

Needing repetition, extra time, visual information or support to organise thoughts does not itself mean a person lacks capacity.

# How is capacity assessed?

The MCA uses a decision-specific legal test. The assessment asks whether the person is unable to make the particular decision because of an **impairment of, or disturbance in the functioning of, the mind or brain**.

## Can the person make the decision?

For the purposes of the Act, a person is unable to make the decision if they cannot do one or more of the following:

- **Understand** the information relevant to the decision.
- **Retain** that information for long enough to make the decision.
- **Use or weigh** the information as part of the decision-making process.
- **Communicate** the decision by any means.

### Short-term retention can be enough

A person does not have to remember information indefinitely. The Act specifically recognises that being able to retain relevant information for only a short period does not automatically prevent someone from making the decision.

## What information is relevant?

This includes information about the reasonably foreseeable consequences of deciding one way or another, and of not making the decision.

### Avoid outcome-based assessments

Capacity is about the person's decision-making process, not whether the assessor agrees with the final choice. A risky, unconventional or unpopular decision is not proof of incapacity.

## Who assesses capacity?

This depends on the decision. Everyday decisions may be considered by the person directly involved in supporting or caring for the individual, while complex or serious decisions may require an appropriately skilled professional. Disputed or particularly difficult cases may require specialist assessment or the Court of Protection.

## If the person lacks capacity

If the person lacks capacity for the particular decision, the focus moves to making a lawful decision in their **best interests** while involving them as much as possible.

### Best interests are personal

Best interests do not simply mean what professionals or relatives think is 'best'. Decision-makers must consider the person's circumstances, wishes and feelings, beliefs and values, and other factors the person would likely consider themselves.

## Involve the person

The person should be encouraged and supported to participate as fully as reasonably possible in the decision. Lack of capacity does not erase their preferences, personality or right to be involved.

## Consult others where appropriate

The MCA requires relevant views to be considered where practicable and appropriate, including people named by the person, those involved in their care or welfare, an attorney under a Lasting Power of Attorney, or a Court of Protection deputy.

### Family does not automatically become the decision-maker

Being a spouse, parent, adult child or other relative does not by itself give somebody legal authority to make decisions for an adult who lacks capacity. Authority may come from the MCA framework, an LPA, a deputyship or another lawful basis depending on the decision.

## Can the decision wait?

Where it is likely that the person may regain capacity, decision-makers should consider whether the decision can safely be delayed so the person can make it themselves.

### Least restrictive

Even where action is in the person's best interests, consider whether the same aim can be achieved in a way that interferes less with their rights and freedom.

# Important decisions and safeguards

The MCA includes additional mechanisms for planning ahead, representation and resolving difficult decisions.

## Lasting Power of Attorney (LPA)

A person with capacity can appoint one or more attorneys to make specified decisions if authority under the LPA applies. Health and welfare LPAs and property and financial affairs LPAs have different scopes.

## Advance decisions to refuse treatment

An adult with capacity can make an advance decision refusing specified medical treatment for a future time when they may lack capacity. Specific legal requirements apply, particularly where life-sustaining treatment is involved.

## Court of Protection

The Court of Protection can make decisions or declarations about capacity and best interests and can appoint deputies where ongoing decision-making authority is needed.

## Independent Mental Capacity Advocate

An **IMCA** must or may be instructed in particular circumstances to support and represent a person who lacks capacity. This will be explored fully in the dedicated IMCA resource in this collection.

## Restraint and deprivation of liberty

The MCA contains safeguards around acts that restrict a person. Restrictions can sometimes be lawful where the relevant legal requirements are met, but a **deprivation of liberty** requires additional legal authorisation and safeguards.

## Next resource

The next PDF in this collection will look specifically at **Deprivation of Liberty Safeguards (DoLS)** and the current legal position around liberty protection.

## Common misunderstandings

**“They have dementia, so they lack capacity.”**

Not necessarily. Capacity must still be assessed for the particular decision at the relevant time.

**“They made a bad decision.”**

An unwise decision does not, by itself, establish lack of capacity.

**“They cannot speak, so they cannot decide.”**

Communication can take many forms. The legal test asks whether the person can communicate their decision by **any means**.

**“Their family can consent for them.”**

Relatives do not automatically have authority to give consent for another adult. The lawful decision-making route depends on the circumstances.

**“Capacity is something a person either has or doesn’t.”**

Capacity is decision-specific and time-specific. Someone may lack capacity for one complex decision while being fully able to make many others.

## Capacity and consent

Capacity and consent are closely connected but not identical concepts. Where a person has capacity for the decision, their own consent or refusal is central. Where they lack capacity, the MCA provides the framework for deciding whether and how action can lawfully be taken on their behalf.

**Refusal can be a valid decision**

Having capacity includes the right to refuse options that professionals, services or family members would prefer the person to accept.

## Practical reminders

- Start by presuming capacity.
- Identify the exact decision that needs to be made.
- Give practical support before concluding the person cannot decide.
- Do not use diagnosis, disability, age, appearance or an unwise choice as a shortcut to incapacity.
- Consider whether temporary factors are affecting the person's decision-making.
- Assess whether the person can understand, retain, use or weigh, and communicate the relevant decision.
- If capacity is lacking, involve the person as fully as possible.
- Consider wishes, feelings, beliefs and values when determining best interests.
- Use the least restrictive effective option.

### A useful starting question

Instead of asking “Does this person have capacity?”, ask: “Can this person make this particular decision, at this particular time, with the right support?”

## About this resource

This PDF provides general educational information about the Mental Capacity Act 2005 in England and Wales. Capacity and best-interests decisions can be legally and clinically complex, and individual situations may require professional or legal advice.

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## References & further information

**Mental Capacity Act 2005.** In particular sections 1-4 concerning the statutory principles, the legal test of capacity and best-interests decision-making.

**Office of the Public Guardian.** *Mental Capacity Act Code of Practice.* Statutory guidance for people working with or caring for people who may lack capacity.

**GOV.UK.** *Making decisions: guidance for health and social care workers.* Updated May 2026 and applicable in England and Wales.

**GOV.UK.** *Checking mental capacity.* Public guidance on decision-specific assessment and the functional elements of the capacity test.

### This collection

The following resources will explore **deprivation of liberty and DoLS**, followed by **Independent Mental Capacity Advocates (IMCA)**, so each topic can be explained properly without overcrowding this introduction to the MCA.